IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.319 OF 2005
IN
EXECUTION APPLICATION NO.611 OF 2001
IN
SUMMARY SUIT NO.4356 OF 1998

Anand M. Shah).. Plaintiff (Judgment-Creditor)

V/s.

Nitin M. Parekh).. Defendant (Judgment-Debtor)

And

Leena N. Parekh and another).. Applicants

Mr.Q.M.Ashfaq for the Plaintiff.

Mr.Jose George for the Applicants.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 14TH NOVEMBER 2005

P.C.:

. This Chamber Summons has been taken out for lifting the attachment on the movable properties including the furnitures and fixtures lying at Flat No.45, 4th Floor, Sealord. G.B.Somani Marg, Cuffe Parade, Mumbai 400 005. According to Applicant No.1, who is the wife of the Defendant, she has purchased the aforesaid flat with her own resources. The movables including the furnitures and fixtures have also been purchased by her and, therefore, the attachment in

respect of the movables be raised. Applicant No.1 is the Director of Applicant No.2 and, therefore, has an independent source of income. She has also annexed several invoices and bills showing purchase of certain items listed in the inventory to the proclamation for sale. Applicant No.1 has accounted for Item Nos.2 and 7 which are the furnitures and fixtures in the Hall, Item Nos.1 and 2 in the Kitchen and Item Nos.3 to 8 in the Bedroom. It is submitted on behalf of Applicant No.1 that her income was large enough to enable her to purchase the other movables listed in the inventory.

2. The Plaintiff contends that he is entitled to have the other items sold since they are not accounted for. The Advocate for the Plaintiff submits that the Defendant and Applicant No.1 are husband and wife respectively. It would, therefore, be natural for the husband to purchase some items for the house. According to the learned Advocate, the fact that Applicant No.1 has been unable to produce any invoice or any material to indicate that she had purchased other items, would show that they belonged to the Defendant who is residing in the aforesaid flat. He, therefore, submits that all the other items which have not been accounted for should be permitted to be sold. He submits that although the debt owed by the Defendant is huge, these household items would fetch some amount to discharge the debt.

3. Heard Advocates.

4. In my view, unless Applicant No.1 is able to account for the purchase of the items from her own resources, the attachment in respect of those items need not be lifted. As rightly submitted by the Advocate for the Plaintiff it would be quite natural for the husband, the Defendant herein, to purchase some household articles. There is no material on record by way of an affidavit of the Defendant or otherwise to corroborate Applicant Nos.1's contention that the articles were purchased by her and, therefore, belonged to her. Accordingly, the attachment in respect of Item Nos.2 and 7 in the Hall, Item Nos.1 and 2 in the Kitchen and Item Nos.3 to 8 in the Bedroom is raised. However, the attachment in respect of the other items will continue.

5. Chamber Summons made absolute accordingly.